APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 94-5188

UNITED STATES OF AMERICA,

Plaintiff - Appellee

versus

Douglas W. Ross, a/k/a Jabari Zakiya,

Defendant- Appellant.

Appeal from the United States District Court of the District of Maryland, at Baltimore. J. Frederick Motz, District Judge. (CR-93-170-JFM)

Submitted: July 19, 1994 Decided: August 4, 1994

Before HALL, LUTTIG, and WILLIAMS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Douglas W. Ross, Appellant Pro Se. Lisa M. Griffin, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.
See I.O.P. 36.5 and 36.6

PER CURIUM:

Douglas W. Ross appeals from his convictions for criminal income tax evasion, failure to file income tax returns, and filing false withholding exemption certificates with respect to the tax years 1987 through 1989. 26 U.S.C. §§ 7201, 7203, 7205(a), (b) (1988). Our review of the record reveals that this appeal is without merit. Ross admits to all of the conduct establishing the criminal offenses with which he was charged; his beliefs regarding the voluntariness or legality of the federal income tax system are not a defense to those charges. Accordingly, we affirm Ross's conviction and sentence. We dispense with oral arguments because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED
September 16, 1994

No. 94-5188
CR-93-170-JFM

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DOUGLAS W. ROSS, a/k/a Jabari Zakiya

Defendant - Appellant

On petition for Rehearing with Suggestion for Rehearing In Banc

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The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. AS no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and as the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,

/s/ Bert M. Montague

CLERK

APPENDIX C

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

Constitutional Provisions

THE FIRST AMENDMENT provides in relevant part:

> Congress shall make no law...abridging the freedom of speech ... and to petition the Government for a redress of grievances.

THE FIFTH AMENDMENT provides in relevant part:

> No person shall be ... deprived of life, liberty or property, without due process of law ...

THE SIXTH AMENDMENT provides in relevant part:

> In all criminal prosecutions, the accused shall ... be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

THE SIXTEENTH states:

> The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Statutes

26 U.S.C. § 61(a) provides in relevant part:

> Except as otherwise provided in this subtitle, gross income means all **income from whatever source derived**, including (but not limited to) the following items: [15 items listed and does **not** include "wages."] (emphasis added)

26 U.S.C. § 3402(n) provides in relevant part:

> ... an employer shall **not be required** to deduct and withhold any tax under this chapter upon payment of wages to an employee if there is in effect with respect to such payment a withholding exemption certificate ... furnished to the employer by the employee certifying that the employee (1) incurred no liability of income tax imposed under subtitle A for his preceding taxable year, and (2) anticipates that he will incur no liability for income tax imposed under subtitle A for his current taxable year. (emphasis added)

26 U.S.C. § 6011 provides in relevant part:

> When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

26 U.S.C. § 6020 provides in relevant part:

> (a) If any person shall fail to make a return required...but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return...
>
> (b) If any person fails to make any return required by any internal revenue law...the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

26 U.S.C. § 6203 provides in relevant part:

> The assessment shall be made by recording the liability of the taxpayer in the office of the Secretary ... Upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of the assessment.

26 U.S.C. § 6212 provides in relevant part:

> If the Secretary determines that there is a deficiency in respect of any tax imposed by subtitle A or B or chapter 41, 42, 43, 44, or

45 he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail.

26 U.S.C. § 6213 provide in relevant part:

> Within 90 days ... after the notice of deficiency authorized in section 6212 is mailed ... the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency.

26 U.S.C. § 6303 provides in relevant part:

> ... the Secretary shall as soon as practicable, and within 60 days after the making of an assessment of a tax pursuant to section 6203, give notice to each person liable for the unpaid tax [deficiency], stating the amount and demanding payment thereof. Such notice shall be left at the dwelling or usual place of business of such person, or shall be sent by mail to such person's last known address.

26 U.S.C. § 7201 provides in relevant part:

> Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title ... shall ... be guilty of a felony and, upon conviction thereof, shall be fined...

26 U.S.C. § 7203 provides in relevant part:

> Any person required under this title to pay any estimated tax or tax, or required ... to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records ... required by law ... shall ... be guilty of a misdemeanor, and upon conviction thereof, shall be fined ...

26 U.S.C. § 7205 provides in relevant part:

> (a) Any individual required to supply information to his employer under section 3402 who willfully supplies false or fraudulent information ... upon conviction thereof, shall be fined ...

Regulations

26 C.F.R. § 601.107(a)

> Each district has a Criminal Investigation function whose mission is to encourage and achieve the highest possible degree of **voluntary compliance** with the internal revenue laws ... (emphasis added)

26 C.F.R. § 601.107(b)(2)

> **A taxpayer who may be the subject of a criminal recommendation will be afforded a district Criminal Investigation conference when he requests one** or where the Chief, Criminal Investigation Division makes a determination that such a conference will be in the best interests of the Government. At the conference, the IRS representative will inform the taxpayer by a general oral statement of the alleged fraudulent features of the case, to the extent consistent with protecting the Government's interest, and at the same time, making available to the taxpayer sufficient facts and figures to acquaint him with the basis, nature, and other essential elements of the proposed criminal charges against him. (emphasis added)

26 C.F.R. § 601.201(a)(1)

> It is the practice of the Internal Revenue Service to answer inquires of individuals and organizations, whenever appropriate in the interest of sound tax administration, **as to their status for tax purposes and as to the tax effects of their acts or transactions**. (emphasis added)

26 C.F.R. § 601.401(a)

> Federal employment taxes are imposed by Subtitle C of the Internal Revenue Code. Chapter 21 ... imposes a tax on employers of one or more individuals and also a tax on employees with respect to "wages" paid and received... **The tax so deducted and withheld is allowed as a credit against the income tax liability** of the employee receiving such wages. (Emphasis added)

APPENDIX D

Essential Elements Constituting Willful Tax Evasion

The three essential elements of fact that the government must prove to a jury beyond a reasonable doubt to sustain a charge of willful tax evasion in violation of 26 U.S.C. § 7201 are:

1. the existence of a tax deficiency;

2. an affirmative act constituting an evasion or attempted evasion of the tax, and;

3. willfulness.

Sansone v. United States, 380 U.S. 343
United States v. Callanan, 450 F.2d 145

Essential Elements Constituting Willful Failure to File Tax Returns

The three essential elements of fact that the government must prove to a jury beyond a reasonable doubt to sustain a charge of willful failure to file tax returns violating 26 U.S.C. § 7203 are:

1. a defendant was required to file a tax return;

2. the defendant failed to file a return, and;

3. the failure to file was willful.

United States v. Brodie, 858 F.2d 429, 497
United States v. Matosky, 421 F.2d 410

APPENDIX E

AO 245 S (Rev. 4/90) Sheet 1 - Judgment in a Criminal Case

United States District Court

_____ District of MARYLAND

UNITED STATES OF AMERICA
V.

DOUGLAS H. ROSS
a/k/a JABARI ZAKIYA
(Name of Defendant)

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: JFM-93-0170
Lisa Griffin, AUSA
Pro Se/Joseph Balter, AFPD
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____
☒ was found guilty on count(s) 1, 2, 3 & 4 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
26:7201	Tax Evasion		1
26:7203	Failure to File		2-4

I hereby attest and certify on 3/25/94 that the foregoing document is a full, true and correct copy of the original on file in my office and in my legal custody.
CLERK, U.S. DISTRICT COURT
DISTRICT OF MARYLAND
By _____ Deputy

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____ and is discharged as to such count(s).
☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.
☒ It is ordered that the defendant shall pay a special assessment of $ 200.00, for count(s) 1, 2, 3 & 4, which shall be due ☐ immediately ☐ as follows:

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: _____
Defendant's Date of Birth: _____
Defendant's Mailing Address: _____

FILED ENTERED
LODGED RECEIVED
SEP 9 - 1994
CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND
DEPUTY

Defendant's Residence Address: _____

February 18, 1994
Date of Imposition of Sentence

Signature of Judicial Officer

J. FREDERICK MOTZ, JUDGE U.S.D.C.
Name & Title of Judicial Officer

2/25/1994
Date

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